



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1995

Mr. Jeffrey A. Davis  
McGinnis, Lochridge & Kilgore  
3200 One Houston Center  
1221 McKinney Street  
Houston, Texas 77010

OR95-942

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 31036.

The Spring Branch Independent School District (the "ISD") has received a request for information regarding the employment and dismissal of two ISD teachers. You assert that some of the requested information is excepted from required public disclosure under sections 552.101, 552.102, 552.103, and 552.111 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former section 3(a)(1) of article 6252-17a, V.T.C.S.). Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under former section 3(a)(2), V.T.C.S. art. 6252-17a, was the same as that delineated in *Industrial Foundation* for former section 3(a)(1), V.T.C.S. art. 6252-17a). Accordingly, we consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

We have reviewed the documents you submitted. All of the documents for which you assert sections 552.101 and 552.102 relate to the teachers' job performance or the reasons for their termination. This information is of legitimate public interest, *see, e.g.*, Open Records Decision No. 470 (1987); Open Records Decision No. 444 (1986), and is therefore not protected under the doctrine of common-law privacy. Nor is the information relating to the board hearings confidential because those hearings were held in closed session under the Open Meetings Act, Gov't Code ch. 551. While the certified agenda or tape recording of a closed session is not available under the Open Records Act, Open Records Decision No. 495 (1988), a document, such as the hearings procedures at issue, is not confidential under the Open Records Act merely because it was discussed or used in a closed session, *id.*<sup>1</sup>

For section 552.103 to apply, the information must relate to litigation to which the ISD is or may be a party. Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). You state that one of the two teachers filed a notice of appeal in December 1994. Since your letter to this office dated December 23, 1994, you have not provided this office with any additional information demonstrating that the teacher has actually appealed his termination. Furthermore, you have made absolutely no showing with respect to the other teacher's termination. For this reason, we conclude that you have not demonstrated that litigation is reasonably anticipated with respect to either termination.

Finally, section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." It excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5.

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<sup>1</sup>We believe that *Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980), cited in your letter brief, is distinguishable given that it did not involve the required disclosure of information pursuant to the Open Records Act.

The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* The information you assert is protected by section 552.111 is generally factual. Moreover, it deals with routine administrative and personnel matters, and does not reflect the policymaking processes of the ISD. Therefore, we conclude that this information may not be excepted from required public disclosure under section 552.111.

All of the information you submitted must be released, with two exceptions. Several documents contain the names of students. Under Government Code section 552.114 and section 552.026, which incorporates the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, into the act, this information must be redacted to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision No. 332 (1982), 206 (1978); *see also* Open Records Decision No. 539 (1990). In addition several documents appear to contain the home address and/or telephone number of a school employee. Government Code section 552.117 requires you to withhold any home address or telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for documents was made.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/MRC/rho

Ref.: ID# 31036

Enclosures: Submitted documents

cc: Ms. Kimberly Reeves  
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(w/o enclosures)